

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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DONNA CARLSON,

## Plaintiffs,

Case No. 2:17-cv-02882-MMD-GWF

V.

SAM'S WEST, INC., *et al.*,

## Defendants.

## ORDER

12 This matter is before the Court on Plaintiff's Amended Memorandum of Attorney Fees  
13 and Costs (ECF No. 77), filed on August 3, 2018. Defendant filed its Opposition (ECF No. 80)  
14 on February 1, 2018. No reply has been filed.

## BACKGROUND

16        This case arises from an alleged injury sustained by Plaintiff. Specifically, the Complaint  
17 (ECF No. 1-1) alleges Plaintiff was struck form behind by shopping carts being pushed by a  
18 motorized cart system on Defendants' premises. ECF No. 1-1 at 5. On November 21, 2018,  
19 Plaintiff filed her Motion to Strike Defendants' Supplemental Expert Reports. *See* ECF No. 63.  
20 On December 6, 2018, Defendant filed its Opposition and on December 13, 2018, Plaintiff filed  
21 her Reply (ECF No. 70). The Court conducted a hearing on December 28, 2018. Based on the  
22 findings set forth on the record, the Court granted, in part, and denied, in part, Plaintiff's Motion  
23 to Strike. *See* ECF No. 71. The Court denied Plaintiff's request to strike Defendants  
24 supplemental expert report. However, the Court awarded Plaintiff reasonable costs and  
25 attorney's fees incurred in preparing and filing her motion. *Id.* The Court instructed Plaintiff to  
26 file her application for attorney's fees by January 11, 2019 with Defendant's response due  
27 January 25, 2019.

1 Plaintiff filed her memorandum of attorney's fees and costs on January 17, 2019. ECF  
2 No. 73. On January 18, 2019 the Court entered an order directing Plaintiff to file an amended  
3 memorandum by January 25, 2019, with Defendant's response now due February 1, 2019.

4 **DISCUSSION**

5 The Supreme Court has held that reasonable attorney fees must "be calculated according  
6 to the prevailing market rates in the relevant community," considering the fees charged by  
7 "lawyers of reasonably comparable skill, experience, and reputation." *Blum v. Stenson*, 465 U.S.  
8 886, 895-96 n. 11, 104 S.Ct. 1541 (1984). Courts typically use a two-step process when  
9 determining fee awards. *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000). First, the  
10 Court must calculate the lodestar amount "by taking the number of hours reasonably expended on  
11 the litigation and multiplying it by a reasonable hourly rate." *Id.* Furthermore, other factors should  
12 be taken into consideration such as special skill, experience of counsel, and the results obtained.  
13 *Morales v. City of San Rafael*, 96 F.3d 359, 364 n. 9 (9th Cir. 1996). "The party seeking an award  
14 of fees should submit evidence supporting the hours worked and rates claimed . . . [w]here the  
15 documentation of hours is inadequate, the district court may reduce the award accordingly."  
16 *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). Second, the Court "may adjust the lodestar, [only  
17 on rare and exceptional occasions], upward or downward using a multiplier based on factors not  
18 subsumed in the initial calculation of the lodestar." *Van Gerwen v. Guarantee Mut. Life Co.*, 214  
19 F.3d 1041, 1045 (9th Cir. 2000).

20 Plaintiff requests attorney's fees in the amount of \$5,605.20 for work performed in  
21 preparing her motion to strike. The amount is based on work performed by Christopher S. Mishler,  
22 Esq., at an hourly rate of \$350.00 and Eunice M. Beattie, Esq., at an hourly rate of \$375.00.  
23 Defendant's argue Plaintiff's request for fees should be limited because her memorandum was not  
24 only untimely but the fees were unreasonable.

25 After reviewing Plaintiff's counsel's affidavit, the Court finds that Plaintiff's counsel has  
26 provided sufficient evidence showing that their hourly rate is reasonable. However, after  
27 reviewing her itemized billing entries, the Court finds that the 16.75 hours of attorney labor is  
28 excessive. The Court finds that the hours involved in preparing Plaintiff's motion to strike and for

1 labor related to such motion should take no more than 13.5 hours of attorney labor. As a result,  
2 the Court will award reasonable attorney's fees to Plaintiff in the amount of \$4,850.00.  
3 Accordingly,

4 **IT IS HEREBY ORDERED** that Defendant must pay the amount of \$4,850.00 to  
5 Plaintiff.

6 **IT IS FURTHER ORDERED** that Defendant is to make the payment to Plaintiff by  
7 **March 15, 2019** unless an objection is filed.

8 DATED this 22nd day of February, 2019.

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12 GEORGE FOLEY, JR.  
13 United States Magistrate Judge  
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